

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Otis M. Kelly, Jr.,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:11cv254
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, London Correctional Institute,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on April 30, 2012 a Report and Recommendation (Doc. 21). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 25).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, respondent's motion to dismiss (Doc. 17) is **GRANTED** and petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 4) is **DISMISSED** with prejudice on the ground that the single ground raised in the petition is not cognizable in federal habeas corpus.

A certificate of appealability will not issue with respect to the claim alleged in the petition, which have been addressed on the merits herein, because petitioner has not stated a

“viable claim of the denial of a constitutional right,” nor are the issues presented “adequate to deserve encouragement to proceed further.” *See Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). *See also* 28 U.S.C. §2253 ( c ); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith,” and therefore **DENY** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott  
Chief Judge Susan J. Dlott  
United States District Court